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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Marriage of HELEN and
ERIK BENHAM.

2d Civil No. B255981
(Cons. w/ No. B259294)
(Super. Ct. No. 1269282)
(Santa Barbara County)

HELEN GARRISON,

Respondent,

v.

ERIK BENHAM,

Appellant.

Erik Benham appeals the trial court's December 2014 orders (1) deeming him a vexatious litigant and prohibiting him from filing any new litigation without leave of court; and (2) taking his motion for reconsideration of a prior order off calendar

for failure to obtain leave of the court.¹ (Code Civ. Proc., §§ 391, 391.7, subd. (d).)² Benham contends he does not satisfy the statutory definition of a vexatious litigant. We affirm.

FACTS AND PROCEDURAL HISTORY

Respondent Helen Garrison (formerly Helen Benham) filed a petition for dissolution of her marriage to Benham in 2008. The trial court granted Garrison sole custody of the children, limited Benham's visitation, and issued a restraining order protecting Garrison and the children from Benham. Benham filed eight unsuccessful motions seeking reconsideration of the court's orders or otherwise challenging them.³

Benham also moved to disqualify three judicial officers for cause. (§ 170.1.) In one such motion, he accused the trial court of "complete disregard for the truth," "abuse and bias," and "callousness." In another he said the court was "corrupted to the degree of complete impartiality and bias," ignored well-settled law, and "trampled all over [r]espondent's rights." Benham also referred to the court as a "kangaroo court."

In 2014, the trial court granted Garrison's petition to declare Benham a vexatious litigant. It prohibited Benham from filing any new litigation without approval of the presiding judge. (§ 391.) After the court declared him a vexatious litigant,

¹ Benham also appealed the trial court's orders of February and August 2014. We dismissed that appeal.

² All further statutory references are to the Code of Civil Procedure, unless otherwise stated.

³ Benham filed at least one other motion for reconsideration before the court declared him a vexatious litigant. The record does not reflect whether this motion was successful.

Benham filed a motion for reconsideration of a fee order without court approval. (§§ 391, 391.7, subd. (d).) The trial court took the motion off calendar because Benham had not obtained the court's permission before filing it.

DISCUSSION

We review an order declaring a litigant to be vexatious for substantial evidence. (*Goodrich v. Sierra Vista Regional Medical Center* (2016) 246 Cal.App.4th 1260, 1265-1266 (*Goodrich*).) We presume the vexatious litigant designation is correct, and imply findings necessary to support it. (*Id.* at pp. 1266-1267.) We will reverse only where there is no substantial evidence to imply such findings. (*Id.* at p. 1266.) The trial court is best situated to receive evidence on the question of whether a litigant is vexatious. (*Morton v. Wagner* (2007) 156 Cal.App.4th 963, 969.)

A vexatious litigant includes one who “repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.”⁴ (§ 391, subd. (b)(3).) A litigant who repeatedly, and without success, seeks reconsideration of the court's prior orders is vexatious under subdivision (b)(3). (*Goodrich, supra*, 246 Cal.App.4th at pp. 1263-1264, 1268 [plaintiff who filed six motions challenging

⁴ There are four statutory definitions of “vexatious litigant.” (§ 391, subd. (b)(1)-(4).) In her motion, Garrison argued Benham was vexatious under subdivision (b)(1) through (3). The trial court did not specify which definition applied to Benham. On appeal, Garrison contends Benham is vexatious under subdivision (b)(1) and (3). Because we hold Benham satisfies the definition of subdivision (b)(3), we need not, and do not, address whether he satisfies any other definition.

the denial of her writ petition, including three after the time to appeal had expired, deemed vexatious].) A litigant who uses frequent, frivolous judicial challenges as a litigation tactic may also satisfy subdivision (b)(3), even if some of those challenges succeed. (*Golin v. Allenby* (2010) 190 Cal.App.4th 616, 638-640 [plaintiffs who filed six challenges to judicial officers deemed vexatious, although two challenges accepted].)

Substantial evidence supports the trial court's finding that Benham is vexatious. Benham filed numerous unsuccessful motions challenging the trial court's orders. Benham also filed challenges to the three judicial officers assigned to the case. Although two were successful, the indecorous tone of the challenges suggests a frivolous purpose. Benham also continued to relitigate issues even after he was deemed a vexatious litigant.

This case is unlike *Holcomb v. U.S. Bank Nat. Assn.* (2005) 129 Cal.App.4th 1494, on which Benham relies. In *Holcomb*, the only evidence supporting the vexatious litigant finding was a docket from a prior case which showed the plaintiff filed many motions. (*Id.* at p. 1506 ["It is difficult, if not impossible, to make a determination under [section 391,] subdivision (b)(3) simply by resort to the docket sheet of a previous case"].) Here, the trial court's own file included Benham's serial unsuccessful motions challenging the trial court's orders.

Benham contends he prevailed on several motions in the trial court. He also contends one of his motions for reconsideration resulted in "normal visitation" and removal of a restraining order. He cites no support in the record, which does not include these motions. His assertion is therefore forfeited.

(Cal. Rules of Court, rule 8.204(a)(1)(C); *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.)

The court did not err in taking Benham's motion for reconsideration off calendar. After declaring Benham a vexatious litigant, the court prohibited Benham from filing any new litigation without leave of the court. (§ 391.7, subd. (a).) The motion constitutes "new litigation." (*Id.*, subd. (d).) Benham does not dispute that he failed to obtain leave before filing it.

We have reviewed Benham's remaining contentions and conclude he has not shown grounds for reversal.

DISPOSITION

The orders are affirmed. Respondent shall recover her costs on appeal.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

James E. Herman, Judge

Superior Court County of Santa Barbara

Erik Benham, in pro. per., for Appellant.

Helen Garrison, in pro. per., for Respondent.

Jarrette & Walmsley and Robert R. Walmsley, for

Minors.